

CHAPTER 7 UNIFORM RULES FOR WAIVERS

283—7.1(261,ExecOrd11,17A) Waiver process. This chapter outlines a uniform process for granting waivers from rules adopted by the commission.

7.1(1) *Commission authority.* A waiver from rules adopted by the commission may be granted in accordance with this chapter if:

a. The commission has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

b. No statute or rule otherwise controls the granting of a waiver from the rule for which a waiver is requested.

7.1(2) *Interpretive rules.* These uniform waiver rules shall not apply to rules defining a statute or other provisions of law or precedent if the commission does not have delegated authority to bind the courts with its definition.

7.1(3) *Compliance with statute.* No waiver shall be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

283—7.2(261,ExecOrd11,17A) Definition. For purposes of this chapter, a waiver means action by the commission which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

283—7.3(261,ExecOrd11,17A) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the commission in situations where no other more specific applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

283—7.4(261,ExecOrd11,17A) Applicability of chapter. The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

283—7.5(261,ExecOrd11,17A) Criteria for waiver. The commission may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the commission, in whole or in part, as applied to the circumstances of a specified person if the commission finds, based on clear and convincing evidence, that:

7.5(1) Application of the rule would impose an undue hardship or injustice on the person for whom the waiver is requested; and

7.5(2) A waiver of the rule on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

7.5(3) A waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

283—7.6(261,ExecOrd11,17A) Mandatory waivers. In response to the timely filing of a completed petition requesting a waiver, the commission shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the commission finds that the application of all or a portion of the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

283—7.7(261,ExecOrd11,17A) Burden of persuasion. The petitioner shall assume the burden of persuasion to demonstrate clear and convincing evidence when a petition is filed for a waiver from a commission rule.

283—7.8(261,ExecOrd11,17A) Special waiver rule not precluded. This uniform waiver rule shall not preclude the commission from granting waivers in other contexts or on the basis of other standards if a statute or other commission rule authorizes the commission to do so and the commission deems it appropriate to do so.

283—7.9(261,ExecOrd11,17A) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons participating in a particular program offered by the commission.

283—7.10(261,ExecOrd11,17A) Filing of petition. A petition for a waiver must be submitted in writing to the commission's Executive Director, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609.

283—7.11(261,ExecOrd11,17A) Contested case. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

283—7.12(261,ExecOrd11,17A) Contents of petition. A petition for waiver shall include the following information where applicable and known to the petitioner:

7.12(1) The name, address, telephone number, and social security number of the person or entity for whom a waiver is being requested and the case number of any related contested case, whether pending or closed.

7.12(2) A description and citation of the specific rule from which a waiver is requested.

7.12(3) The specific waiver requested, including the precise scope and duration.

7.12(4) The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

7.12(5) A history of any prior contacts between the commission and the petitioner. The historical summary shall include:

a. A list of all of the programs, contracts, allocations, bond issues, loans, grants, or other activities in which the petitioner has participated or from which the petitioner has received a benefit and which are affected by the proposed waiver.

b. A description of each instance when the petitioner has participated in or benefited from any of the commission's programs or contracts, including but not limited to allocations, grants, or loans held by the petitioner, any notices of noncompliance, other administrative events, whether federal or state, contested case hearings, or investigative reports relating to the program, allocation, grant, or loan.

7.12(6) Any information known to the petitioner about the commission's treatment of similar cases.

7.12(7) The name, address, and telephone number of any person or entity, inside or outside state government, who would be adversely affected by the granting of a petition.

7.12(8) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

7.12(9) Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver.

283—7.13(261,ExecOrd11,17A) Additional information. If the petition for waiver is not filed in a contested case and prior to issuing an order granting or denying a waiver, the executive director may request additional information from the petitioner relative to the petition and circumstances relating to the request for waiver. The request may be in the form of written questions or oral interview. The executive director may interview or direct written questions to other persons in connection with the waiver requested. If the petition was not filed in a contested case, the commission, or its executive director, may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the commission's executive director, a committee of the commission's staff, or a quorum or committee of the commission's board to consider the petition for waiver.

283—7.14(261,ExecOrd11,17A) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required and provide a written statement that notice has been provided.

283—7.15(261,ExecOrd11,17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to commission proceedings for a waiver of a rule only when the commission so provides by rule or order or is required by statute to do so.

283—7.16(261,ExecOrd11,17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to that particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

283—7.17(261,ExecOrd11,17A) Commission discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

283—7.18(261,ExecOrd11,17A) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

283—7.19(261,ExecOrd11,17A) Conditions. The commission may condition the granting of a waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

283—7.20(261,ExecOrd11,17A) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

283—7.21(261,ExecOrd11,17A) Timing for ruling. The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case proceeding, the commission shall grant or deny the petition no later than the time at which the final decision in the contested case is issued.

283—7.22(261,ExecOrd11,17A) When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission. However, the commission shall remain responsible for issuing an order denying a waiver.

283—7.23(261,ExecOrd11,17A) Service of order. Within seven days of its issuance, any order issued under these uniform rules shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

283—7.24(261,ExecOrd11,17A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the commission shall maintain a record of all orders granting and denying waivers under these uniform rules. All records pertaining to waivers shall be indexed and available to members of the public at the commission’s office. Some petitions may contain information the commission is authorized or required to keep confidential. The commission may accordingly edit confidential information from petitions or orders prior to public inspection.

283—7.25(261,ExecOrd11,17A) Voiding or cancellation. A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The commission may, at any time, cancel a waiver upon appropriate notice and hearing if the commission finds that the facts as stated in the petition are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute or rule, or the petitioner has failed to comply with the conditions of the order.

283—7.26(261,ExecOrd11,17A) Violations. Violation of conditions in a waiver shall be treated as a violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

283—7.27(261,ExecOrd11,17A) Defense. After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked. The order is not assignable, and it shall not inure to the benefit of the heirs or successors in interest of the person first obtaining the waiver.

283—7.28(261,ExecOrd11,17A) Judicial review. Judicial review of a commission decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A and Executive Order Number 11.

[Filed 1/19/01, Notice 10/18/00—published 2/7/01, effective 3/14/01]

[Filed 9/24/03, Notice 6/11/03—published 10/15/03, effective 11/19/03]